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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/542,632	04/04/2000	Bryan J. Moles	SAMS01-00102	5791
23990	7590	01/18/2007		
DOCKET CLERK P.O. DRAWER 800889 DALLAS, TX 75380			EXAMINER YUN, EUGENE	
			ART UNIT 2618	PAPER NUMBER
			MAIL DATE 01/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/542,632

Applicant(s)

MOLES ET AL.

Examiner

Eugene Yun

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**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 December 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 12/18/06 have been fully considered but they are not persuasive.

The applicant again argues that the Reifer reference does not teach "a database capable of storing a service provisioning file comprising a mobile station service provisioning program in interpreted byte-code format". The examiner again disagrees.

Firstly, it is believed by the examiner that the database in the Reifer reference is a part of a OTA service activation system which provides service provisioning files to mobile customers (see col. 1, line 66 to col. 2, line 5). That means that the database in the Reifer reference meets the vast majority of the limitations of the database in claim 1, and therefore, can be used. In addition, the "SPNet server" in fig. 9 is clearly shown to be connected to the "GBS database", and the cited passage in col. 9, lines 7-15 show that the SPNet server can indeed be a provisioning controller simply because the SPNet server is majorly involved in service provisioning. The claims do not detail the term "provisioning controller" in any specific way to indicate that the SPNet server or even the entire SPNet system cannot equate to the provisioning controller in the claimed invention. Therefore, unless more specific detail is provided in the claims to indicate otherwise, Reifer's SPNet system/server can indeed equate to the provisioning controller.

Secondly, the examiner already indicated in the previous action that the Hsu reference teaches the provisioning controller "capable of receiving a notification

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indicating that a first mobile station is unprovisioned", thus overcoming the argument that the Reifer reference does not teach the above limitation. However, this limitation is believed by the examiner to be well known in the art in itself as it is believed to be obvious that the majority of newly purchased mobile phones known in the art send a notification to a provisioning controller that it is unprovisioned as soon as it is activated for the first time.

The system and database in Reifer is believed to not only be usable in Hsu's system, since both references involve the act of service provisioning, but it would actually improve Hsu's system since the combination would add to the system the ability to download JAVA files (or files in interpreted byte-code format). This would improve the system in Hsu by expanding the capabilities of the mobile phones in Hsu.

The applicant again argues that the Chow reference does not teach "that receipt of said service provisioning file causes said first mobile station to automatically execute said mobile station service provisioning program in said service provisioning file, execution of said mobile station service provisioning program automatically provisioning said first mobile station without further interaction from a service operator". The examiner disagrees.

The examiner reiterates that the user's only action involves activating the phone for the first time. No further input is made by the user. The only additional input that is made is by the retail outlet, not the user. Furthermore, the examiner refers to col. 13, line 59 to col. 14, line 8 to more clearly show that the automation is indeed done by the mobile station (col. 13, line 64 to col. 14, line 1). In addition, the cited passage also

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more clearly shows that the Chow reference teaches a service provisioning file received by the mobile station (col. 13, lines 64-65), and that the reception causes the mobile station to automatically execute a mobile station provisioning program (col. 13, lines 66-67 and col. 14, line 1). Furthermore, it is believed by the examiner to be obvious to one skilled in art that the process of "a service provisioning file received by the mobile station, and that the reception causes the mobile station to automatically execute a mobile station provisioning program" needs to be performed for all newly purchased cellular phones in order to be provisioned at all. The above mentioned method is believed to be the process of provisioning all newly purchased cellular phones known in the art.

For the above reasons, the examiner stands by his rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Yun whose telephone number is (571) 272-7860. The examiner can normally be reached on 9:00am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Matthew D. Anderson can be reached on (571)272-4177. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eugene Yun  
Examiner  
Art Unit 2618

EY



MATTHEW ANDERSON  
SUPERVISORY PATENT EXAMINER